
(2019) 10 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 20446 Of 2019

Rakesh Kumar

APPELLANT

Vs

Union Of India Through And Ors

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Citation : (2019) 10 PAT CK 0007

Hon'ble Judges : Amreshwar Pratap Sahi, CJ; Ashutosh Kumar, J

Bench : Division Bench

Advocate : Satyendra Rai, Ramadhar Shekhar

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and the learned counsel for the Railways.

The petitioner is aggrieved by the order of the Tribunal dated 30th July, 2019 whereby the original application filed by him questioning the transfer orders has been dismissed.

Learned counsel for the petitioner contends that for the time being the petitioner is questioning that part of the order whereby the direction of the authorities to transfer him to Dhanbad has been upheld. He submits that Dhanbad is a far away place and since the proceedings are going on at Hajipur, therefore, a long distance travel would cause inconvenience and even otherwise the petitioner could not have been subjected to an inter divisional transfer. Learned counsel has relied on the observations made by a Division Bench in C.W.J.C. No.12706 of 2016, decided on 20th June, 2017.

Learned counsel for the Railways, on the other hand, submits that the petitioner's transfer had been occasioned on account of his having indulged in certain malpractices that was detected by the Vigilance Department and, consequently, it was in this background that an administrative transfer was made

which is essentially not a punitive order. It is submitted that the order passed on the second occasion sending him to Dhanbad was only to enable the proceedings to continue at Hajipur and to remove the petitioner from mass public contact.

Whatever be the justification for transferring, it is no doubt true that transfer being an exigency of service, the same can be assailed either on the ground of mala fides or on account of violation of any statutory rule.

In the present case, instead of mala fides, on the other hand, there is an allegation against the petitioner based on some vigilance report. The same has been extracted in paragraph 5 of the written statement filed by the Railways before the Tribunal.

Apart from this, the Railways have also relied on the supplementary Circulars issued by them from time to time and we find that the supplementary Circular dated 2.11.1998 contains Clause 3 where it has been provided that other staff in mass contact areas detected to be indulging in malpractices should also be transferred on inter-divisional basis.

In our considered opinion, there is absolutely no prohibition and, to the contrary, the aforesaid supplementary Circular enables the authorities to resort to an inter divisional transfer. Thus, neither mala fides nor violation of Rules are made out and so far as inconvenience is concerned, we find that the petitioner being an employee of the Railways can commute on the Railways itself for attending to the enquiry. In case he has any other serious inconvenience to face or otherwise, he can represent to the authorities to that effect.

We, therefore, find no valid ground, much less a legal infirmity so as to warrant interference with the impugned order.

So far as the Division Bench judgement relied on by the learned counsel for the petitioner is concerned, we find that the Railways have, on the other hand, rightly relied on another Division Bench judgement of this Court in the cases of B.S. Chaturvedi and Arun Kumar Vs. Union of India, decided on 5th August, 2009, C.W.J.C. Nos.4902 of 2009 and 4909 of 2009 which categorically records that there is no prohibition for inter divisional transfer. In the circumstances, the judgement relied on by the learned counsel for the petitioner, which does not discuss either the Circulars or the Rules, cannot be accepted as a binding precedent.

The petition is, accordingly, consigned to records with the said observations.